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THE COURT: Much of what Mr. Lopez has said by way of his justification for the sentence he proposes, the four-year sentence, relates to Mr. Gould's future. And Mr. Lopez writes to me in his memorandum that Mr. Gould's first offender status makes it likely that his rate of recidivism is very low. And then Mr. Lopez adds: "Other factors such as his age at time of sentencing, race, educational attainment, sustained employment during the year prior to his sentencing, his compliance with conditions of pretrial release, and his abstinence from illicit drugs during the year prior to his incarceration further demonstrate that a long prison sentence is unnecessary to serve the purposes of sentencing in this case."

Much of what's in this representation to me is about the fact that Mr. Gould is law abiding. I don't think you get credit for law abiding, that's what everybody is supposed to do, abide by the law. The fact that he didn't use any illicit drugs, the fact that he complies with his pretrial release, that's what he's supposed to do. You don't get extra credit for doing what you're supposed to do. Educational attainment is something I would like to think about. Sustained employment, something I think about. I don't know what Mr. Lopez means about race, but he adds that is a factor I

1 should consider in determining recidivism and, thus, the
2 sentence. The guidelines, if I apply the guidelines,
3 specifically prohibit my consideration of race. And even if I
4 don't apply the guidelines, I would not give any consideration
5 of race, one way or the other.

6 What I have considered, what I do consider is the
7 balance that the sentence imposed is supposed to draw. The
8 balance is: On the positive side, Mr. Gould is a young man,
9 who has -- who has a history of some educational attainment.
10 He has shown some positive efforts to make something of himself
11 that does not involve involvement in anti-social behavior.
12 Going back to school and working are all positives, which I
13 take into account.

14 On the negative side of the chart, however, is: He
15 was engaged in the sale of what has become a very dangerous
16 drug, a very popular drug, oxycontin. People break into
17 pharmacies and use violence to obtain this drug. And we're
18 talking about very large quantities. The quantity I have used
19 is 7,000 pills. I use that because I think it's reasonable to
20 use it. I also think that there's every reason to believe that
21 Mr. Gould was involved in substantially larger quantity. I do
22 not believe that Mr. Alviti was his only customer, and I do not
23 believe that the 7,000 that I have found that's reasonable in
24 the evidence in this case is all that might have been found had
25 there been more reliable evidence. But I think the message

1 needs to go out to Mr. Gould and to everybody who deals in
2 oxycontin that the courts take it seriously. Congress contends
3 that I take this crime seriously.

4 You know that whole equation for dealing with crack
5 cocaine. I have real problems with that 100-to-1 ratio, but
6 that ratio was developed because the Congress decided that
7 crack was dangerous; it's cheaper than powder; it's more
8 prevalent than powder; it's associated with gangs; and so they
9 made what, I think, is essentially an unfair assessment of how
10 crack cocaine should be treated.

11 Particularly, do I think that that is unfair in
12 light of the virulent effect that oxycontin has had on
13 society. It's growing in its use, it's easily transportable in
14 pill form, it's dangerous. And I agree with Mr. Tobin that it
15 seems to be a gateway to heroin. I can't demonstrate that, but
16 it does seem to be.

17 I don't intend to punish Mr. Gould as if he were
18 dealing crack cocaine, but I do want everybody to understand
19 that I understand that dealing in oxycontin is serious
20 business. And I want to send a signal to the world that I will
21 treat it seriously and that the courts generally will treat it
22 seriously.

23 Do I need 15 years, 15.6 years to make that
24 statement? I don't think so. Because of his educational
25 attainment and the possibilities that exist and I recognize in

1 Mr. Gould, I don't think he needs 15 years as punishment for
2 this crime, as dangerous as it is. But I'm not persuaded, I am
3 not persuaded by any means about the risk of recidivism in the
4 way you say, Mr. Lopez. He's a young man. The statistics
5 are: the older you are, the less likely you are to recidivate.
6 And I can't trust that I have a person who is not going to be a
7 recidivist if that person comes into court and misrepresents
8 the facts to me in a proceeding when I have to determine
9 whether the evidence against him has been properly obtained. I
10 can't believe that there isn't a problem about recidivism and
11 about his future, about the future of a person who does that.

12 But, as I said before, I don't believe I need 15.6
13 years to make this point. I think the punishment that's
14 necessary can be achieved in less time.

15 The signal about deterrence can be -- both to
16 Mr. Gould and for the community generally, that point can be
17 made in less time than 15.6 years.

18 I think Mr. Gould needs some treatment for his use
19 of steroids, and I want to give him that opportunity. I want
20 to give him an opportunity to learn some things while he is
21 confined, but it does seem to me, as Mr. Tobin says, that this
22 had been a commercial activity, purely a commercial activity,
23 not an activity -- the sale of oxycontin, it was not driven by
24 necessity of any kind.

25 Mr. Gould might have gotten a break if he had told

1 the officers at the time or Mr. Tobin at sometime all he knew
2 about this activity, and that would include the people who gave
3 him the drugs. Now, I know that's dangerous. I know that's
4 dangerous to do, because people who give that kind of
5 information mark themselves. But I have people that do that
6 all the time. Just earlier this week or late last week I
7 sentenced a woman who testified freely and openly in this
8 courtroom against the Colombian cartel. And she testified,
9 even though she knew her family was at risk, even though on the
10 day she completed her testimony one member of her family was
11 killed on a bus in Bogota. But she testified, and she worked
12 with the government, because she wanted the advantages that
13 Mr. Gould did not seek in this case: the application of the
14 safety valve. And she gave a great deal of information,
15 information that allowed the government to go down to Colombia
16 and extradite these two men from Colombia.

17 So I say all this by way of saying it is possible
18 for Mr. Gould to help himself and to show me that he has a
19 sense of the wrong that has been done and the notion that he
20 wishes to correct that wrong.

21 Now, most of what I've said really is on the
22 negative side. But in my balancing, I still retain the view
23 that I don't think any of this requires a 15.6-year sentence.
24 The sentences under the guidelines are very long, and Congress
25 intended it to be long. But my sense of what is fair, what

1 this community needs, doesn't dictate that a sentence of that
2 kind is necessary to accomplish the goals of sentencing.
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